

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
FARMINGDALE FAMILY OF RETIREES	:	DETERMINATION
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

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Petitioner, Farmingdale Family of Retirees, Van Cott Avenue, Farmingdale, New York 11735, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 806359).

A hearing was held before Nigel G. Wright, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on September 13, 1989 at 1:30 P.M. Petitioner appeared by its officers, Seymour Kopilow, Co-President, and Timothy D. Xenos, Treasurer. The Division of Taxation appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUE

Whether petitioner, whose primary activity is holding dinner meetings, is exempt from tax as an educational organization under Tax Law § 1116(a)(4).

FINDINGS OF FACT

Petitioner, Farmingdale Family of Retirees ("Farmingdale"), was organized in January 1986 by former employees of the Farmingdale school system. All former employees are presumed to be members of the organization unless a desire to be excluded is specifically expressed.

The purpose of Farmingdale is stated in its constitution as follows:

"The Farmingdale Family of Retirees is a nonprofit, social, cultural, and educational organization for all retired employees of the Farmingdale Public Schools.... The purpose of the organization is to maintain and perpetuate among the retirees the personal, educational, and professional associations and contacts originally established during many years of service within the Farmingdale community."

In an announcement dated January 2, 1986, advertising Farmingdale's first meeting, the following reasons for organizing the retirees of the Farmingdale School District were given:

"-to keep in touch and inform each other about news of the district (including

retirement dinners).--To keep informed about health insurance....--To give retirees advice as it relates to our pensions and social security."

Farmingdale is conducted by four elected officers along with an executive committee which consists of members "who volunteer to attend any scheduled executive meeting." In addition, the organization is provided with meeting facilities, recording services, printing supplies, and service and mailing privileges by the Farmingdale Union Free School District Number 22.

Farmingdale does not require its members to pay dues but rather derives its income by adding a small surcharge to the costs of its luncheons and trips. Almost all its expenditures are spent on these luncheons and trips. In addition, Farmingdale's constitution does not provide for the disposition of funds upon dissolution. While petitioner's witnesses asserted that an amendment had been made to provide that any existing funds upon dissolution would go to the school district, no such amendment has been submitted.

Petitioner has held luncheon meetings several times per year either on school property or in private banquet facilities. Each meeting has sponsored one or more speakers including officials from the school district, state government and the retirement system. Subjects discussed at these luncheons include health insurance, laws or bills affecting retirees and pension supplements.

Other activities of petitioner have included circulating a magazine article on travel, encouraging mammography exams, and publicizing temporary job and volunteer opportunities within the school district. In addition, petitioner has sponsored bus trips to West Point, Hyde Park and the Vanderbilt Mansion.

In March 1987 and March 1988, Farmingdale publicized bus trips to Albany for the purpose of lobbying for school and retirement legislation. These trips were funded by the school district and approximately 11 of petitioner's 400 members participated in the event.

On March 18, 1988, petitioner filed an application pursuant to 20 NYCRR 529.1(j)(2) for an exemption from sales and use taxes as an association organized and operated exclusively for educational purposes under Tax Law § 1116(a)(4). The application was denied by the Taxpayer Assistance Bureau of the Division of Taxation in a letter dated August 22, 1988. The denial was based upon the failure of petitioner's constitution to dedicate its assets to an exempt purpose upon dissolution and the failure of its purpose to be exclusively educational, and because its operation was not primarily educational but was, rather, social. Moreover, the Bureau asserted that the organization is operated substantially for the benefit of its members and emphasized its past lobbying activities.

On November 23, 1988, Farmingdale filed a petition pursuant to Tax Law § 2008 protesting the denial of the application for the exempt organization certificate (see, 20 NYCRR 529.1[a][4]).

### CONCLUSIONS OF LAW

A. Tax Law § 1116(a)(4) provides for an exemption for any organization "organized and operated exclusively for religious, charitable...or educational purposes....," the net earnings of which do not inure to the benefit of private individuals, and which does not engage in propaganda or political activity. This provision has been construed similarly to Internal Revenue Code § 501(c)(3) after which it is clearly patterned (Matter of Jesus Revivals, Inc., 139 AD2d 875; Matter of Brooklyn Navy Yard Development Corp., State Tax Commission, May 8,

1985 [TSB-H-85(167)S]).

B. An educational organization such as petitioner can be one which presents forums, lectures and other similar programs (20 NYCRR 529.7[e][1][v]; 26 CFR 1.50[c][3]-[d][3][ii]). However, in order to be eligible for exemption status, such an organization must meet the conditions of the statute and regulations regarding its organization and operation. Specifically, petitioner must be organized and operated exclusively for religious, charitable, or educational purposes (Tax Law § 1116[a][4]). Such conditions are not met in the instant case.

First, Farmingdale's organization is not restricted to furthering only educational purposes. Rather, its constitution clearly states that one of its purposes is to aid members in maintaining contact with other members with whom they had worked prior to retirement. The existence of such social purposes clearly disqualifies the organization for exempt status (Alumnae Chapter Beta of Clovia v. Commissioner, 46 TCM 297).

Second, Farmingdale's operation also does not meet the statutory condition. The Regulation at 20 NYCRR § 529.7(d)(2), provides the following:

"(2) Activities. An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if almost all of its activities accomplish one or more exempt purposes.... An organization will not be so regarded if more than an unsubstantial part of its activities is not in furtherance of an exempt purpose."

Nonexempt purposes which disqualify an organization from exempt status include social and recreational purposes (St. Louis Science Fiction, Ltd. v. Commissioner, 49 TCM 1126). As a result of the above statutory restrictions, the former State Tax Commission has, in the past, decided against the exemption of organizations similar to Farmingdale (Matter of National Assn. of Retired and Veteran Railway Employees, Unit 24, Utica, NY, State Tax Commission, July 26, 1984, [TSB-H-84(113)S]; Matter of Waverly Senior Citizens Club, State Tax Commission, September 26, 1986, [TSB-H-86(180)S]).

C. Petitioner argues that if its activities were performed directly by the school district, they would be sufficiently insubstantial in comparison to the school district's other activities as to warrant exemption. However, such is not a fact in this case. Therefore, that issue need not be decided (see, Matter of Chenango Forks High School Student Council, State Tax Commission, March 20, 1987, [TSB-H-87(104)S]).

D. The petition of Farmingdale Family of Retirees is denied.

DATED: Troy, New York  
March 29, 1990

/s/ Nigel G. Wright  
ADMINISTRATIVE LAW JUDGE